

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2508 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

G.VENAMMA,W/O G.PURSHOTTAM

Appearance:

MR SUNIL B PARIKH for Petitioner
MR MEHUL S SHAH for Respondent No. 1,2,3,4
NOTICE NOT RECD BACK for Respondent No. 5, 6

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 25/08/1999

ORAL JUDGEMENT (Per: Panchal, J.)

Learned Counsel for the appellant seeks

permission to delete names of respondents No.5 and 6 from the present appeal as they are not necessary parties for the purpose of deciding issues involved in the appeal. Permission as prayed for is granted. The names of respondents No.5 and 6 stand deleted from the present appeal.

Admitted.

2. Mr.Mehul S.Shah, learned Counsel waives service of notice on behalf of respondents No.1 to 4. Having regard to the facts of the case and at the joint request of the learned Counsel appearing for the parties, appeal is taken up for final hearing today.

3. By means of filing this appeal under section 173 of the Motor Vehicles Act, 1988, the New India Assurance Company Limited has challenged legality of the judgment and award dated January 30, 1999, rendered by the Motor Accident Claims Tribunal (Main), Kachchh at Bhuj, in M.A.C.P. No.31 of 1997, by which the Tribunal has directed the appellant and others to pay compensation of Rs.2,97,500/- with running interest at the rate of 15% p.a. from the date of the application till deposit, to the respondents No.1 to 4.

4. The accident in question took place on December 19, 1996. Deceased Mr. G. Purushottam was proceeding on his bicycle from the place of his residence to the place of his work. According to the respondents No.1 to 4, he was proceeding on the left hand side of the road going from Old Kandla to Booster. When he reached near the place of accident, the respondent No.5 whose name is deleted came from opposite direction driving LPG Tanker bearing registration No.GJ-12-T-9950 in a rash and negligent manner. As per respondents No.1 to 4, the respondent No.5 was driving the tanker at an excessive speed and without caring for the safety of the users of the road, as a result of which, he lost control over steering and dashed with the bicycle of the deceased. Because of the accident, the deceased fell down and sustained serious injuries. The tanker was being driven at such an excessive speed that after dash, the cycle and the deceased were dragged for a distance and skull pieces of the deceased had entangled in the wheels of the tanker. It is the case of the respondents No.1 to 4 that deceased succumbed to the injuries on the spot and after causing accident, the respondent No.5 had tried to run away, but, was chased by the persons who were working near the place of accident and after apprehending him, he was handed over to the police. According to the

respondents No.1 to 4, the death of deceased was the direct result of rash and negligent driving of the tanker by the respondent no.1. Under the circumstances, they instituted M.A.C.P. No.31 of 1997, before the MACT (Main) Kachchh at Bhuj, under section 163-A of the Motor Vehicles Act, 1988, and claimed compensation of Rs.5,41,500/- from the driver and owner of the tanker as well as from the appellant with which the tanker in question was insured.

5. Though the driver and owner of the tanker as well as insurance company were duly served, no reply was filed to the claim petition which was instituted by the respondents No.1 to 4 under section 163-A of the Motor Vehicles Act, 1988 ('the Act' for short). The Tribunal considered the scheme envisaged by section 163-A of the Act and concluded that exhaustive provision is made regarding interim compensation on structured formula basis and that it is not necessary for the claimants to plead or prove negligence while claiming compensation under sec.163-A of the Act. The Tribunal took into consideration documents produced by the respondents No.1 to 4 with lists Exh.15, such as Form No.4 prepared by the Investigating Officer, Inquest Panchnama and copy of the First Information Report, Post-Mortem Notes relating to the deceased etc., and concluded that at the time of accident, the age of the deceased was above 20 years but not exceeding 25 years. The Tribunal considered nature of occupation of the deceased and after considering the income certificate issued by the Proprietor of M/s. Vikas Fabricators and Erectors dated 7.1.1997 deduced that the deceased was working as welder in the said firm and his income per month was Rs.3500/-. However, for the purpose of calculating the amount of interim compensation under sec.163-A of the Act, the tribunal held that the income of the deceased should be assessed at Rs.2,000/p.m. Thereafter the tribunal considered Second Schedule and concluded that the respondents No.1 to 4 were entitled to a sum of Rs.4,32,000/- as compensation as provided in the proviso to Clause 1 of the Second Schedule. Out of the said amount, 1/3rd amount was deducted by the Tribunal towards the expenses that the victim would have incurred for himself if he had been alive and thus in the ultimate analysis the tribunal has held that the net amount payable under the Schedule to the respondents No.1 to 4 is Rs.2,88,000/-. As per Clause 3 of the Second Schedule the respondents No.1 to 4 are also entitled to recover Rs.2,000/- as funeral expenses and Rs.2,500/- towards the loss of estate and Rs.5,000/towards the loss of consortium and, therefore, the tribunal has also awarded compensation to the

respondents No.1 to 4 under those heads. In the final decision, the tribunal has held that the respondents No.1 to 4 are entitled to compensation of Rs.2,96,500/with running interest at the rate of 15% p.a. from the date of application till deposit, by the impugned award giving rise to the present appeal.

6. Learned Counsel for the appellant submitted that under sec.163-A of the Act, interim award should not have been passed and the award passed ought to have been considered as final award by the tribunal. It was pleaded that claimants could have either claimed compensation under sec.166 of the Act or claimed compensation under sec.163-A of the Act, and therefore, the tribunal was not right in holding that what is claimed by the respondents No.1 to 4 is interim compensation. It was stressed by the learned Counsel for the appellant that no cogent evidence was led by the respondents No.1 to 4 to establish that the income of the deceased was Rs.2,000/and, therefore, the impugned award should be set aside. According to the learned Counsel for the appellant the impugned award is contrary to the well settled principles governing grant of compensation and, therefore, the appeal should be allowed. In the alternative, it was pleaded that the tribunal was not justified in directing the appellant to pay the amount of compensation with interest at the rate of 15% p.a. and at the best direction to pay compensation at the rate of 12% p.a. ought to have been given by the tribunal. In support of the last submission, the learned Counsel for the appellant placed reliance on the decision rendered by the Supreme Court in the case of UNITED INDIA INSURANCE CO. LTD. Vs. M.K.J. CORPORATION III (1996) CPJ 8 (SC).

7. Mr.Mehul Shah, learned Counsel for the respondents No.1 to 4 pleaded that the tribunal was justified in treating the claim petition filed by the respondents No.1 to 3 under sec.163-A of the Act, as application for interim compensation, in view of the decision of the High Court in Ramdevsingh V.Chudasma Vs. Hansrajbhai V.Kodala - 1991(1) GLR 631, and therefore, it cannot be said that any error is committed by the tribunal in awarding compensation to the claimants on structured formula outlined in the Second Schedule. The learned Counsel for the respondents No.1 to 4 emphasised that, in view of the certificate of income issued by the employer of the deceased, his income ought to have been assessed at Rs.3500/- p.m., but, for the purpose of awarding compensation under sec.163-A of the Act, income is assessed at Rs.2000/- p.m. by the tribunal which

cannot be said to be erroneous at all. The learned counsel for the respondents No.1 to 4 claimed that a just award has been passed by the tribunal, and as there is no substance in the appeal the same should be dismissed by the court.

8. Heard learned Counsels for the parties. We may state that we have taken into consideration the relevant documents produced by the learned counsel for the parties produced for our perusal before deciding the present appeal. In view of the decision of the Division Bench in Ramdevsingh V. Chudasma (Supra), the submission that the respondents No.1 to 4 are not entitled to interim compensation cannot be accepted. The scheme envisaged under sec.163-A of the Act is examined by the Division Bench in detail and it is held that, determination of compensation on a structured formula, outlined in the Second Schedule is in the nature of interim compensation. As the compensation payable to the claimants under sec.163-A of the Act is in the nature of interim compensation, the claim made by the insurance company that the claimants are debarred from filing a substantive application under sec.166 of the Act cannot be accepted.

9. So far as the quantum of the compensation is concerned, we notice that the claimants had produced certificate of income issued by Proprietor of M/s. Vikas Fabricators and Erectors dated 7.1.97 at Mark.15/6. The said certificate indicated that income of the deceased per month was Rs.3500/-. However, for the purpose of calculating the amount of interim compensation, the tribunal has held that income of the deceased should be assessed at Rs.2000/-. In our view, no error is committed by the tribunal in holding that the income of the deceased should be assessed at Rs.2000/- p.m. After ascertaining the monthly income of the deceased for the purpose of calculation of interim compensation as contemplated by sec.163-A of the Act, the tribunal has awarded compensation in terms of Second Schedule and it is not brought to our notice by the learned counsel for the appellant, that any error is committed by the tribunal in calculating interim compensation in terms of Second Schedule. Therefore, the submission that the respondents No1 to 4 should not have been awarded interim compensation of Rs.2,97,500/- based on structured formula cannot be accepted. A direction had been given by the tribunal to the appellant as well as others to pay compensation of Rs.2,97,500/- with 15% interest per annum from the date of application till deposit. In United India Insurance Co.Ltd. (Supra), the Supreme Court has held in para. 9 as under:

"The next question is : What rate of interest the insured-respondent is entitled to get? In common parlance, when the insured-respondent is deprived of right to enjoy his money or invest the money in business, necessarily the loss has to be compensated by way of payment of interest by the Insurance Company. We are informed that as per the directions of the Government of India the appellant-Insurance Company has no option but to invest the money in the securities specified by the Government of India under which the Insurance Company is securing interest on investment at the rate of 11.3% per annum. Under these circumstances, the appellant-Insurance Company is liable to pay interest @ 12% per annum from January 1, 1991 till date of payment. It is then contended that as per the policy, the respondent is entitled to consequential loss as per the independent policy. The Commission no doubt did not give any independent reason for the same but all the claims were heard and disposed of together. Under these circumstances, we are of the view that the claims must be deemed to have been rejected."

10. In view of the principles laid down by the Supreme Court in the above referred to case, we are of the opinion that direction ought to have been given to the appellant and others to pay compensation to respondents No.1 to 4 with interest at the rate of 12% p.a. and, therefore, to that extent the impugned award deserves to be modified.

11. For the foregoing reasons, appeal partly succeeds. It is held that the respondents No.1 to 4 would be entitled to receive compensation of Rs.2,97,500/- as contemplated by sec.163-A of the Act with interest at the rate of 12% p.a. from the date of the application till deposit. The other findings recorded in the impugned award are hereby upheld. Appeal is allowed to the extent indicated above only with no order as to costs.

syed/